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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Equal Access and Interconnection Obligations
Pertaining to Commercial Mobile Radio Services

CC Docket No. 94-54
RM-8012

TO: The Commission

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American Personal Communications ("APC")^{1/} respectfully submits these Comments in response to the *Notice of Proposed Rulemaking and Notice of Inquiry* released on July 1, 1994 in the above-captioned proceeding.^{2/} The Commission has requested comment on whether equal access obligations should be imposed on cellular and other commercial mobile radio service ("CMRS") providers, whether specific requirements should be imposed on local exchange carriers providing interconnection to CMRS providers, and whether CMRS providers should be required to interconnect with and provide resale opportunities to other CMRS providers. These issues are of great interest to APC and to the PCS industry generally. PCS will be in direct competition with the dominant, well-established cellular providers. In addressing these issue, it is

^{1/} American PCS, L.P., d/b/a American Personal Communications ("APC"), a partnership in which APC, Inc. is the managing general partner and The Washington Post Company is an investor/limited partner.

^{2/} In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 (July 1, 1994).

imperative that the Commission not impose any new regulatory requirements that will exacerbate the competitive disadvantage of PCS.

A. Equal Access

The Commission has tentatively decided to require that cellular providers offer their subscribers equal access to all interexchange carriers ("IXCs"). Equal access will provide several benefits, the foremost of which is increasing consumer choice and potentially lowering the price of long distance service to cellular and other CMRS subscribers. RBOC cellular licensees currently must provide equal access and, pursuant to the terms negotiated with the Department of Justice, AT&T/McCaw must provide equal access as well. Thus, the overwhelming majority of cellular subscribers will soon have equal access to any IXC operating in its service area. For PCS and wide-area SMR licensees to be competitive with cellular services, they too will have to offer their subscribers equal access to all IXCs. In the highly competitive CMRS market, neither APC nor any other CMRS provider will turn away a customer because that customer desires a particular long distance carrier. APC is committed to providing the best and most competitive service to its customers, and accordingly expects to provide equal access. We expect that other PCS licensees will do so as well.

Because competitive forces will dictate that CMRS providers offer their customers equal access to IXCs, requiring equal access is not only unnecessary, but would likely result in increased costs without any increased benefits to consumers. CMRS providers should be given the flexibility to implement equal access in the most cost effective manner that satisfies consumer demand. Also, the Commission must foster an

environment that will allow the smaller, less-established systems to gain a foothold in the wireless market. PCS providers currently have no systems, no subscribers and no market power. Imposing particular equal access burdens — such as balloting or 1+ dialing — and the associated costs on PCS providers will inhibit these start-up systems from becoming fully competitive with cellular.

Moreover, requiring particular equal access arrangements may limit the ability of PCS providers to offer innovative long distance services to its customers, services that undoubtedly would benefit consumers by decreasing price and increasing service competition. For example, a PCS provider should have the freedom to negotiate a bulk purchase of long distance service at sharply reduced rates and then offer that service at these reduced rates to its subscribers.^{3/} If such arrangements were to be prohibited by equal access obligations, consumers would not only lose the opportunity to obtain discounted long distance service, but PCS providers lose an opportunity to attract new customers by offering innovative services.

Similarly, the Commission should allow CMRS providers to offer innovative wide-area services. Customer demand and the costs to the CMRS licensee of providing service over a wide area should dictate when a call will be handed off to an IXC. If consumers desire wide area or regional calling and it is economically feasible for the licensee, the CMRS licensee should be permitted to offer service throughout its contiguous service area. PCS and wide-area SMR providers have no competitive

^{3/} Subscribers would have the option of purchasing long distance service from the PCS licensee or any other IXC that served the PCS service area.

advantage over local exchange carriers or IXC's. Restricting the ability of CMRS providers to offer wide area services would, again, only restrict the availability of services to consumers and impede competition in the CMRS and wireline markets. Also, the Commission should not require that CMRS providers offer more than a single point of interconnection with the IXC.

B. LEC/CMRS Interconnection

The Commission has requested comment on whether it should require LECs to offer interconnection to CMRS providers under tariff or whether it should retain its current requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection. In the seven years since the Commission's Ombudsman Order, mobile service providers have worked out the majority of issues relating to interconnection with LECs, with the exception of mutual compensation. Despite the clear intent of the Ombudsman Order, LECs have consistently resisted implementing mutual compensation for interconnection. LECs generally do not pay for traffic terminating on the wireless networks that originated from landline, and some even charge access rates for providing this service.

Merely reiterating that the policy of mutual compensation applies to all CMRS providers is not likely resolve this problem. The Commission must require that all LEC/CMRS interconnection agreements provide for mutual compensation for both

interstate and intrastate traffic.^{4/} Without such a requirement, PCS providers will be limited in their ability to provide competitive consumer prices.

Requiring that LECs file tariffs for interconnection services would not resolve the mutual compensation problem and would likely create new problems. Negotiated agreements allow CMRS providers to tailor their interconnection requirements specifically to their networks and to design their interconnection needs in a cost-effective manner. Tariffing inherently creates transaction costs and delays that cannot be controlled by the CMRS provider. Experience has shown that interconnection agreements that are not tariffed provide for significantly lower costs to the LEC, which can then be passed on to the CMRS provider and ultimately to the consumers.

Requiring that interconnection agreements include a "most favored customer clause" also will not resolve past problems with LEC/CMRS interconnection agreements. Such clauses offer little or no protection to CMRS providers, and often result in disputes and disagreements over the type of interconnection arrangements contemplated by the contract.

Finally, there appears to be no real benefit to requiring that LEC interconnection agreements be filed with the Commission for public inspection. However, should the Commission impose such a requirement, it should delete all information pertaining to the identification of the CMRS provider and its particular circumstances, as the public disclosure of such information could have anticompetitive affects. Also, no fee or

^{4/} Because mutual compensation should be seen an inherent part of the provision of reasonable interconnection, there is no jurisdictional issue.

particular format should be required, as these requirements would only create additional costs to the LECs that would likely be borne by the CMRS providers.

C. Interconnection Among CMRS Providers

In its *Notice of Inquiry*, the Commission seeks comment on whether it should require interconnection among CMRS providers in order to advance competition and encourage efficiencies and lower rates in the mobile services marketplace. Although marketplace incentives should encourage interconnection and interoperability between CMRS providers, the Commission should nonetheless establish basic interconnection guidelines and requirements for CMRS providers to promote efficient access to telecommunications networks and advance competition.

Specifically, consistent with Sections 201(a) and 201(b) of the Communications Act, the Commission should require CMRS providers to provide interconnection service upon reasonable request and at just and reasonable rates. A CMRS provider should not be permitted to deny interconnection unless it can demonstrate that such a denial is reasonable. Also, PCS providers should be classified as nondominant CMRS providers and their rates be presumed just and reasonable. Cellular providers, on the other hand, should be classified as dominant CMRS providers and accordingly bear the burden of demonstrating, if challenged, that their rates are just and reasonable. And finally, the Commission should require that, in accordance with Section 202(a) of the Communications Act, CMRS providers may not discriminate in offering interconnection

services.^{5/} As the Commission has determined, CMRS providers are co-carriers and accordingly should be required to adhere to the interconnection principles set forth in the Ombudsman Order.^{6/}

With respect to PCS-cellular interconnection arrangements, APC believes that the Commission must impose specific requirements that go beyond these general principles. PCS systems will be directly competing with fully established cellular systems that offer their subscribers coast-to-coast roaming capabilities. As PCS providers begin building out their systems, they will be able to offer competitive service only if subscribers have access to nationwide roaming capabilities on cellular systems. Unless the Commission mandates that cellular providers enter into fair and reasonable interconnection and roaming agreements with PCS providers, cellular carriers will be able to use their dominant market power to inhibit the development of PCS. Accordingly, cellular providers should be required to interconnect HLR and VLR databases so that roaming is technically feasible and to provide such interconnection within one year of the PCS provider's request.

D. CMRS Providers' Resale Obligations

In the *Notice of Inquiry*, the Commission has also requested comment on whether other CMRS providers should be subject to the same resale obligations that apply to

^{5/} For example, existing cellular providers are likely to offer both PCS and cellular services and interconnect these two services with one another. Cellular providers should be required to offer equivalent interconnection services to other PCS providers.

^{6/} These principles should apply to all broadband CMRS providers, including resellers.

cellular providers. Under the principles of regulatory parity, the Commission's general resale requirements should be imposed on all broadband CMRS providers, with appropriate restrictions so that CMRS providers do not abuse resale opportunities to avoid building out their systems. For example, a PCS licensee should be permitted to deny resale service to another PCS licensee in the same service area after the latter licensee has held its license for five years or until the time of the first build out requirement.

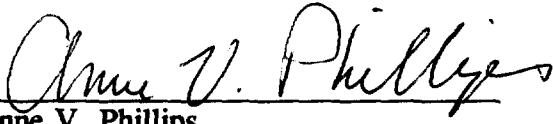
The Commission also should not exempt cellular providers from providing resale opportunities to facilities-based CMRS competitors in their service areas. Such an exemption could assist cellular providers in preserving their dominant position in the CMRS marketplace. Indeed, because of this dominant market position, PCS providers should be permitted to restrict sale of PCS service to cellular carriers in the same service area. Cellular carriers have for the last year been advertising and implementing PCS-like services on their networks. Allowing cellular carriers to obtain additional PCS spectrum by purchasing it from a PCS competitor will only add to cellular's competitive advantage.

Finally, the Commission requests comment on whether it should require all CMRS providers to allow customers of other CMRS providers to use their services on a roaming basis. As discussed above, PCS customers must be able to roam on cellular systems for PCS to compete with cellular during the build-out stage. Accordingly, the Commission should require that roaming be available between all broadband offerings — cellular, PCS and wide-area SMR systems — where technically feasible. The Commission need not

and should not, however, mandate equipment standards. The market demand for such roaming capabilities should result in compatible equipment.

Respectfully submitted,

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